

(1) Supreme Court, U.S.  
FILED

05-427 AUG 26 2005  
No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

JOAN ROBERTS,  
*Petitioner*

v.

TITUS COUNTY MEMORIAL HOSPITAL;  
GEORGE BURNS, Director of Radiology,  
Titus County Memorial Hospital;  
GENE LOTT, Director of Human Resources,  
Titus County Memorial Hospital

On Petition for Writ of Certiorari to the United States Court of  
Appeals for the Fifth Circuit

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

**No. 1:** Whether the "By-laws" of a local governmental entity that state, the administrator "may dismiss any employee for good cause and thereafter make a report to the Board of the dismissal", create employment due process rights over the general presumption of an "at will" status?

**No. 2:** Must a facial challenge to a local governmental policy in the employment context that is a prior restraint effectively condemning speech as a patient advocate and thereby associations with colleagues be judged upon its face, rather than the substantiality of the reasons advanced for the policy's purpose, in the absence of testimony of the specific speech supporting the charges against petitioner; accordingly, did the court properly apply the standard of review for a just determination?

**No. 3:** In *Waters v. Churchill*, 511 U.S. 661 (1994) this court determined the *Connick* test must be applied to the defendant's version of plaintiff's speech utilizing the *Waters*' reasonable-negligence test when speech is in dispute.

In such a case, when the Hospital refused to come forth with specific, non-conclusory, information of the alleged speech as the employer thought it to be and facts of a reasonable investigation predating Petitioner's firing, stating it would be asking them "to prove [plaintiff's] case"; accordingly, is justice served in a summary judgment proceeding to deny the truth of Petitioner's pleadings and apply the *Connick* test with ungoverned deference to the Hospital's generalized version and characterization of Petitioner's claims – standing alone – in a mock *Pickering* analysis purported to be a balance deserving of a constitutional right, or does the Hospital have the burden to come forth with facts to effectuate the *Waters* and *Connick* test to negate liability, or some other undefined procedure?

**No. 4:** In a freedom of speech pretext claim alleging retaliation for previous undisputed speech, what is the proper application of the *Connick v. Myers*, 461 U.S. 138 (1983) test – to which speech is the court to apply the *Connick* test? Does the court apply the *Connick* test to the prior speech for which Petitioner claims she was fired under the guise of the Code #6 & solicitation policies or is the *Connick* test applied to the disputed pretextual reasons, taken as true, as in the case at bar and thus, foreclose a *Pickering* analysis on the prior speech?

**No. 5:** In a challenge to a solicitation policy applied to Petitioner with alleged viewpoint discrimination in a non-public forum, where it is undisputed the policy was not uniformly enforced, the policy's purpose was not argued or implicated, the incidental restriction was greater than what was essential, and the restriction had the effect of silencing political speech in general; does the Petitioner need to prove the disputed non-speech element of the same speech act is a matter of public concern etcetera, when the Court found the speech element was a matter of public concern, yet cited no authority to support this precedent?

**No. 6:** In the *Pickering v. Board of Ed.*, 391 U. S. 563 (1968) analysis is the *potential* for disruptiveness to the Hospital's efficiency of treating patients to be met by admissible evidence carrying a "clear potential" as in *Connick v. Myers* and *Waters v. Churchill*?

**No. 7:** In a Title VII claim, is the Petitioner entitled to have the Court determine her *prima facie* case on the type claim pled, or as in the case at bar, does the Court rule on the type claim as the Hospital characterizes it; and accordingly, can Petitioner's hostile work environment claim be based on disparate treatment rooted in her Director's prejudice and sex based stereotyped set of beliefs and expectations and use supporting evidence of subjective and discretionary promotion systems of statistical disparity; and is the Court in conflict with itself that Title VII only addresses ultimate employment actions.

**No. 8:** What span of temporal proximity is sufficient to be presumptive of causation in a Title VII retaliation claim, since the Courts are in great conflict on this issue and are not state of mind issues supported by circumstantial evidence on pretext for the jury?

## **LIST OF PARTIES**

**In compliance with Rule 14 1 (b) of the Rules of the Supreme Court of the United States, all parties appear in the caption of the case on the cover page.**

## **CORPORATE DISCLOSURE STATEMENT**

**Petitioner is a private citizen and not a non-governmental corporation.**

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## **CITATIONS OF OPINIONS**

The order and opinion of the Fifth Circuit on Appellant's appeal from the U.S. District Court for the Eastern District of Texas, Texarkana Division, is unpublished but appears in the Appendix at 1, *Roberts v. Titus County Memorial Hospital*, No. 04-41101 (5th Cir., April 14, 2005). The order denying Appellant's Motion for Rehearing from the Fifth Circuit appears in the Appendix at 3.

The order and opinion on Defendant's Motion for Summary Judgment of the United States District Court for the Eastern District of Texas, Texarkana Division is unpublished but appears in the Appendix at 2, *Roberts v. Titus County Memorial Hospital*, USDC No. 5:03-CV-21-DF (July 22, 2004).

## **STATEMENT OF JURISDICTION**

The judgment of the Fifth Circuit was entered on April 14, 2005, affirming the Trial Court's judgment of Defendant's Motion for Summary Judgment. Petitioner's motion for rehearing was timely filed and overruled on June 1, 2005.

The U. S. Supreme Court has jurisdiction over Petitioner's Petition for Writ of Certiorari under Supreme Court of the United States Rule 10 (a) because this Court has entered a decision in conflict with the decision of another United States Court of appeals on the same important matter, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the the Supreme Court's supervisory power; and under Rule 10 (c) because the Court of Appeals decided an important question of federal law that has not been, but should be, settled by the Supreme Court, or has decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court.

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS**

**The First Amendment of the United States Constitution provides:**

**"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."** U. S. Const. Amend., [Article 1.] (1789)

**The Fourteenth Amendment of the United States Constitution provides:**

**"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."** U. S. Constitutional Amendment, Article XIV. (1868)

**Title VII of the Civil Rights Act of 1964,  
42 U. S. Code §2000e-2. Unlawful Employment Practices.**

**(a) Employer practices**

**It shall be an unlawful employment practice for an employer-**

**(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or**

**(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or**